

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Michael S. McManus

Bankruptcy Judge

Sacramento, California

May 27, 2014 at 2:00 p.m.

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1. 10-27500-A-13 LIDIA VALENCIA MOTION TO
JPJ-2 DISMISS CASE
5-2-14 [76]

Final Ruling: The motion will be dismissed because it is moot. The case was previously converted to one under chapter 7.

2. 10-27120-A-13 EMILITO/MELISSA MOTION TO
JPJ-2 SIMPLICIANO DISMISS CASE
5-2-14 [92]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

Tentative Ruling: The motion will be granted and the case will be dismissed.

First, the debtor has failed to pay to the trustee approximately \$400 as required by the proposed plan. The foregoing has resulted in delay that is prejudicial to creditors and suggests that the plan is not feasible. This is cause for dismissal. See 11 U.S.C. § 1307(c)(1).

Second, the trustee's Notice of Filed Claims was filed and served on March 7, 2011 as required by Local Bankruptcy Rule 3007-1(d) and former General Order 05-03. That notice advised the debtor of all claims filed by creditors. Given the claims filed and their amounts, it will take 96 months to pay the dividends promised by the confirmed plan. The confirmed plan specifies that it must be completed within 60 months as required by 11 U.S.C. § 1322(d).

The debtor failed to reconcile the plan with the claims, either by filing and serving a motion to modify the plan to provide for all claims within the maximum duration permitted by section 1322(d), or by objecting to claims. This is required by Local Bankruptcy Rule 3007-1(d)(5) which provides: "If the Notice of Filed Claims includes allowed claims that are not provided for in the chapter 13 plan, or that will prevent the chapter 13 plan from being completed timely, the debtor shall file a motion to modify the chapter 13 plan, along with any valuation and lien avoidance motions not previously filed, in order to reconcile the chapter 13 plan and the filed claims with the requirements of the Bankruptcy Code. These motions shall be filed and served no later than ninety (90) days after service by the trustee of the Notice of Filed Claims and set for hearing by the debtor on the earliest available court date." See also former General Order 05-03, ¶ 6; In re Kincaid, 316 B.R. 735 (Bankr. E.D. Cal. 2004).

The time to modify the plan under Local Bankruptcy Rule 3007-1(d)(5) and under former General Order 05-03, ¶ 6, has expired. This material breach of the plan

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is cause for dismissal. See 11 U.S.C. § 1307(c)(6).

3. 11-45524-A-13 MARTICIA DONALD MOTION TO
JPJ-1 DISMISS CASE
5-2-14 [51]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

Tentative Ruling: The motion will be granted and the case will be dismissed.

First, the debtor has failed to pay to the trustee approximately \$250 as required by the proposed plan. The foregoing has resulted in delay that is prejudicial to creditors and suggests that the plan is not feasible. This is cause for dismissal. See 11 U.S.C. § 1307(c)(1).

Second, the trustee's Notice of Filed Claims was filed and served on October 3, 2012 as required by Local Bankruptcy Rule 3007-1(d) and former General Order 05-03. That notice advised the debtor of all claims filed by creditors. Given the claims filed and their amounts, it will take 46 months to pay the dividends promised by the confirmed plan. The confirmed plan specifies that it must be completed within 36 months as required by 11 U.S.C. § 1322(d).

The debtor failed to reconcile the plan with the claims, either by filing and serving a motion to modify the plan to provide for all claims within the maximum duration permitted by section 1322(d), or by objecting to claims. This is required by Local Bankruptcy Rule 3007-1(d)(5) which provides: "If the Notice of Filed Claims includes allowed claims that are not provided for in the chapter 13 plan, or that will prevent the chapter 13 plan from being completed timely, the debtor shall file a motion to modify the chapter 13 plan, along with any valuation and lien avoidance motions not previously filed, in order to reconcile the chapter 13 plan and the filed claims with the requirements of the Bankruptcy Code. These motions shall be filed and served no later than ninety (90) days after service by the trustee of the Notice of Filed Claims and set for hearing by the debtor on the earliest available court date." See also former General Order 05-03, ¶ 6; In re Kincaid, 316 B.R. 735 (Bankr. E.D. Cal. 2004).

The time to modify the plan under Local Bankruptcy Rule 3007-1(d)(5) and under former General Order 05-03, ¶ 6, has expired. This material breach of the plan is cause for dismissal. See 11 U.S.C. § 1307(c)(6).

4. 13-24466-A-7 MARGO CHAU MOTION TO
JPJ-2 DISMISS CASE
4-23-14 [39]

Final Ruling: The motion will be dismissed as moot. The case was converted to one under chapter 7 on April 30, 2014.

5. 12-39367-A-13 JAMES/MELISSA TREMAINE MOTION TO
JPJ-3 DISMISS CASE
4-23-14 [44]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

Tentative Ruling: The motion will be granted and the case will be dismissed.

The debtor has failed to cooperate with the trustee as required by 11 U.S.C. § 521(a)(3) by providing the trustee with a copy of the debtor's 2013 income tax return and payment advices. This is required by 11 U.S.C. § 521(f), Local Bankruptcy Rule 3015-1(b)(5) and the confirmed plan. This material breach has prevented the trustee from administering the case to the advantage of unsecured creditors and is cause for dismissal. See 11 U.S.C. § 1307(c).

6. 13-35574-A-13 RUBEN RUIZ
JPJ-1

MOTION TO
DISMISS CASE
5-9-14 [17]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

Tentative Ruling: The motion will be granted and the case will be dismissed.

The debtor has failed to commence making plan payments and has not paid approximately \$5,608 to the trustee as required by the proposed plan. This has resulted in delay that is prejudicial to creditors and suggests that the plan is not feasible. This is cause for dismissal. See 11 U.S.C. § 1307(c)(1) & (c)(4).